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Plaintiff NATERA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA,

SAN FRANCISCO DIVISION

GUARDANT HEALTH, INC.,

Plaintiff and Counterclaim-
Defendant,

vs.

NATERA, INC.,

Defendant and Counterclaim-
Plaintiff.

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CASE NO. 3:21-CV-04062-EMC

**NATERA, INC.'S OPPOSITION TO
GUARDANT HEALTH, INC.'S MOTION
FOR LEAVE TO FILE AN ADDITIONAL
MOTION *IN LIMINE***

Place: Courtroom 5, 17th Floor

Judge: Hon. Edward M. Chen

1 On the evening of October 11, one business day before the pretrial conference, Guardant
 2 Health, Inc. (“Guardant”) filed a Motion for Leave to File an Additional Motion *in Limine* (the
 3 “Motion”), seeking to preclude certain testimony of Dr. Matthew Rabinowitz, the founder of Natera,
 4 Inc. (“Natera”). Mot. at 2. Guardant’s Motion has already been denied by this Court. *See* Ex. 1
 5 (August 28, 2024 Hearing Tr.) at 50:10-52:4. The Motion is additionally improper because it
 6 violates the Court’s Scheduling Order (Dkt. 694). The Court should reject Guardant’s meritless
 7 eleventh-hour invitation to reopen a closed matter.

8 As an initial matter, the Court already denied the relief Guardant is seeking. Guardant first
 9 rose this issue through an oral motion during the August 28, 2024 hearing. At that hearing,
 10 Guardant’s counsel asked the court “for leave to file just a couple very short motions that were raised
 11 by [Dr. Rabinowitz’s] testimony.” Ex. 1 (August 28, 2024 Hearing Tr.) at 50:10-21. The Court
 12 rejected that request. Specifically, after learning that Dr. Rabinowitz’s deposition took place on
 13 June 7, 2024—months before the August 28 hearing—the Court emphasized that it “advanced the
 14 motions *in limine* specifically so that we would do things in an orderly way No more motions,
 15 period.” *Id.* at 51:20-21, 52:1-9. Nothing has changed since that hearing, and Guardant has not
 16 provided any reason that justifies revisiting the Court’s prior ruling.

17 Guardant’s Motion is additionally improper because it comes woefully late, in violation of
 18 the Court’s Standing Order and Pretrial Order. The Court’s Standing Order on Civil Pretrial
 19 Instructions states that any motion *in limine* should be served “[a]t least thirty-two (32) days before
 20 the pretrial conference” and filed “at least twenty-one (21) days prior to the conference.” Judge
 21 Chen’s Civil Pretrial Instructions at 4.¹ The Court reiterated this instruction in its Pretrial Order. *See*
 22 Dkt. 694 (Third Amended Case Management Scheduling Order); *see also* Dkt. 662 (Second
 23 Amended Case Management Scheduling Order dated September 16, 2024), Dkt. 557 (Amended
 24 Case Management Scheduling Order dated June 11, 2024); Dkt. 417 (Case Management Scheduling
 25 Order dated October 3, 2023). The date of the pretrial conference is October 15, 2024, a date that
 26

27 ¹ *See* [https://www.cand.uscourts.gov/wp-content/uploads/judges/chen-emc/EMC-Pretrial-](https://www.cand.uscourts.gov/wp-content/uploads/judges/chen-emc/EMC-Pretrial-Instructions.pdf)
 28 [Instructions.pdf](https://www.cand.uscourts.gov/wp-content/uploads/judges/chen-emc/EMC-Pretrial-Instructions.pdf) (last access October 14, 2024).

1 has been set since June 11, 2024. Dkt. 557. Thus, for motions *in limine* to be considered, the motion
 2 must be served by September 13 and filed by September 24. *See* Dkt. 694. Those deadlines have
 3 long passed. There is no reason why Guardant could not have filed this Motion in a timely
 4 manner. Dr. Rabinowitz’s deposition took place on June 7, 2024. Ex. 1 (August 28, 2024 Hearing
 5 Tr.) at 51:11-20. Guardant should not be able to change the rules of the game without justification
 6 on the eve of trial.

7 Further, in another violation of the Court’s pretrial order, Guardant never sought to meet and
 8 confer before filing the Motion, and never otherwise raised this issue before it filed the
 9 Motion. Rather, Guardant hid this issue in a vague sentence in its portion of the Joint Pretrial
 10 Statement. Dkt. 699 at 4 (“Guardant anticipates seeking leave to address the admissibility of
 11 evidence of misconduct by Natera and its witnesses, including with respect to their credibility.”).²
 12 Natera repeatedly sought to clarify the meaning of Guardant’s vague statement and the
 13 “misconduct” that was referenced, but Guardant ignored those requests. *See* Ex. 2 at 1-4 (Oct. 9,
 14 2024 V. Parker Email, Oct. 10, 2024 V. Parker Email, Oct. 11, 2024 V. Parker Email, and Oct. 12,
 15 2024 V. Parker Email). Only *after* Guardant filed this Motion, and during a meet and confer for a
 16 different purpose, did Guardant explain that the alleged “misconduct” statement refers to the issues
 17 in its newly-filed Motion.

18 Guardant argues that “[t]here needs to be a level playing field.” Mot. at 5. This statement
 19 reads particularly ironic as Guardant is the only party that is not playing by the rules. Trial is in
 20 mere weeks, and the period for pretrial submissions has come to an end. Natera respectfully requests
 21 the Court deny Guardant’s Motion.

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 27 ² Guardant initially refused to jointly submit a supplemental pretrial statement (Dkt. 669 at 2)
 28 and asked the Court to strike Natera’s pretrial statement. Dkt. 674. Only after the Court ordered
 the parties to resubmit a joint pretrial statement (Dkt. 679) did Guardant comply.

1 DATED: October 14, 2024

QUINN EMANUEL URQUHART &
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4 By /s/ Andrew J. Bramhall

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